

Brazil

PEACE, FRIENDSHIP, COMMERCE, AND NAVIGATION

Treaty signed at Rio de Janeiro December 12, 1828

Ratified by Brazil December 12, 1828

Senate advice and consent to ratification March 10, 1829

Ratified by the President of the United States March 17, 1829

Ratifications exchanged at Washington March 18, 1829

Entered into force March 18, 1829; operative from December 12, 1828

Proclaimed by the President of the United States March 18, 1829

*Articles relating to commerce and navigation terminated December 12,
1841*¹

8 Stat. 390; Treaty Series 34²

In the Name of the Most Holy and Indivisible Trinity:

The United States of America and His Majesty the Emperor of Brazil, desiring to establish a firm and permanent peace and friendship between both Nations, have resolved to fix, in a manner clear, distinct, and positive, the rules which shall in future be religiously observed between the one and the other, by means of a Treaty or General Convention of Peace, Friendship, Commerce, and Navigation.

For this most desirable object, the President of the United States has conferred full powers on William Tudor their Chargé d’Affaires at the Court of Brazil; and His Majesty the Emperor of Brazil on the Most Illustrious and Most Excellent Marquez of Aracaty, a member of His Council, Gentleman of the Imperial Bed-chamber, Councillor of the Treasury, Grand Cross of the Order of Aviz, Senator of the Empire, Minister and Secretary of State for Foreign Affairs, and Miguel de Souza Mello e Alvim, a member of His Council, Commander of the Order of Aviz, Knight of the Imperial Order of the Cross, Chief of Division in the Imperial and National Navy, Minister and Secretary of State for the Marine, who after having exchanged their said full powers, in due and proper form, have agreed to the following articles:

¹ Pursuant to notice of termination given by Brazil Mar. 26, 1840.

² For a detailed study of this treaty, see 3 Miller 451.

ARTICLE I

There shall be a perfect, firm and inviolable peace and friendship between the United States of America and their citizens, and his Imperial Majesty, his successors and subjects throughout their possessions and territories respectively, without distinction of persons or places.

ARTICLE II

The United States of America, and His Majesty the Emperor of Brazil, desiring to live in peace and harmony with all the other nations of the earth, by means of a policy frank and equally friendly with all, engage mutually, not to grant any particular favour to other nations in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same freely, if the concession was freely made, or on allowing the same compensation, if the concession was conditional. It is understood, however, that the relations and conventions which now exist or may hereafter exist between Brazil and Portugal, shall form an exception to this article.

ARTICLE III

The two high contracting parties being likewise desirous of placing the commerce and navigation of their respective countries, on the liberal basis of perfect equality and reciprocity, mutually agree, that the citizens and subjects of each may frequent all the coasts and countries of the other, and reside and trade there in all kinds of produce, manufactures and merchandize: and they shall enjoy all the rights, privileges and exemptions, in navigation and commerce, which native citizens or subjects do, or shall enjoy, submitting themselves, to the laws, decrees, and usages, there established, to which native citizens or subjects are subjected. But it is understood that this article does not include the coasting trade of either country, the regulation of which is reserved by the parties respectively, according to their own separate laws.

ARTICLE IV

They likewise agree that whatever kind of produce, manufactures, or merchandize, of any foreign country, can be from time to time, lawfully imported into the United States, in their own vessels, may be also imported in vessels of Brazil: and that no higher or other duties upon the tonnage of the vessel and her cargo, shall be levied and collected, whether the importation be made in the vessels of the one country or the other. And in like manner, that whatever kind of produce, manufactures, or merchandize of any foreign country, can be, from time to time, lawfully imported into the Empire of Brazil, in its own vessels, may be also imported in vessels of the United States: and that no higher or other duties upon the tonnage of the vessel and

her cargo, shall be levied or collected whether the importation be made in vessels of the one country, or of the other. And they agree that whatever may be lawfully exported, or re-exported from the one country in its own vessels, to any foreign country, may in like manner, be exported or re-exported in the vessels of the other country. And the same bounties, duties, and drawbacks, shall be allowed and collected, whether such exportation, or re-exportation, be made in vessels of the United States, or of the Empire of Brazil. The government of the United States however considering the present state of the navigation of Brazil, agrees that a vessel shall be considered as Brazilian, when the proprietor and captain are subjects of Brazil and the papers are in legal form.

ARTICLE V

No higher or other duties shall be imposed on the importation into the United States, of any articles the produce or manufactures of the Empire of Brazil, and no higher or other duties shall be imposed on the importation into the Empire of Brazil, of any articles the produce or manufactures of the United States, than are or shall be payable on the like articles, being the produce or manufactures of any other foreign country: nor shall any higher or other duties, or charges be imposed in either of the two countries, on the exportation of any articles to the United States, or to the Empire of Brazil respectively, than such as are payable on the exportation of the like article to any other foreign country: nor shall any prohibition be imposed on the exportation or importation of any articles, the produce or manufactures of the United States, or of the Empire of Brazil, to or from the territories of the United States, or to or from the territories of the Empire of Brazil, which shall not equally extend to all other nations.

ARTICLE VI

It is likewise agreed, that it shall be wholly free for all merchants, commanders of ships, and other citizens or subjects of both countries, to manage themselves their own business, in all the ports and places subject to the jurisdiction of each other, as well with respect to the consignment and sale of their goods and merchandize by wholesale or retail, as with respect to the loading, unloading and sending off their ships; they being in all these cases to be treated as citizens or subjects of the country in which they reside, or at least to be placed on a footing with the subjects or citizens of the most favoured nation.

ARTICLE VII

The citizens and subjects of neither of the contracting parties shall be liable to any embargo, nor be detained with their vessels, cargoes, or merchandize or effects, for any military expedition, nor for any public or private purpose whatever, without allowing to those interested, a sufficient indemnification.

ARTICLE VIII

Whenever the citizens or subjects of either of the contracting parties shall be forced to seek refuge or asylum in the rivers, bays, ports or dominions of the other, with their vessels whether of merchant or of war, public or private, through stress of weather, pursuit of pirates, or enemies, they shall be received and treated with humanity, giving to them all favour and protection, for repairing their ships, procuring provisions, and placing themselves in a situation to continue their voyage without obstacle or hindrance of any kind.

ARTICLE IX

All the ships, merchandize and effects belonging to the citizens or subjects, of one of the contracting parties, which may be captured by pirates, whether within the limits of its jurisdiction, or on the high seas, and may be carried, or found in the rivers, roads, ports, bays, or dominions of the other, shall be delivered up to the owners, they proving in due and proper form, their rights before the competent tribunals: it being well understood, that the claim should be made within the term of one year by the parties themselves, their attorneys, or agents of their respective Governments.

ARTICLE X

When any vessel belonging to the citizens or subjects of either of the contracting parties, shall be wrecked, foundered, or shall suffer any damage, on the coasts, or within the dominions of the other, there shall be given to them all assistance and protection, in the same manner which is usual and customary with the vessels of the nation, where the damage happens, permitting them to unload the said vessel, if necessary, of its merchandize and effects, without exacting for it any duty, impost or contribution whatever, until they may be exported, unless they be destined for consumption.

ARTICLE XI

The citizens or subjects of each of the contracting parties shall have power to dispose of their personal goods within the jurisdiction of the other, by sale, donation, testament or otherwise; and their representatives being citizens or subjects of the other party, shall succeed to the said personal goods, whether by testament, or *ab intestato*, and they may take possession thereof, either by themselves, or others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country, wherein said goods are, shall be subject to pay in like cases; and if, in the case of real estate, the said heirs would be prevented from entering into the possession of the inheritance, on account of their character of aliens, there shall be granted to them the term of three years, to dispose of the same, as they may think proper, and to withdraw the proceeds without molestation, nor any other charges than those which are imposed by the laws of the country.

ARTICLE XII

Both the contracting parties promise and engage formally to give their special protection to the persons and property of the citizens and subjects of each other, of all occupations, who may be in their territories, subject to the jurisdiction of the one or the other, transient or dwelling therein, leaving open and free to them the tribunals of justice for their judicial intercourse, on the same terms which are usual and customary, with the natives or citizens and subjects of the country in which they may be; for which they may employ, in defence of their rights, such advocates, solicitors, notaries, agents, and factors, as they may judge proper in all their trials at law.

ARTICLE XIII

It is likewise agreed, that the most perfect and entire security of conscience shall be enjoyed by the citizens or subjects of both the contracting parties in the countries subject to the jurisdiction of the one and the other, without their being liable to be disturbed or molested on account of their religious belief, so long as they respect the laws and established usages of the country. Moreover the bodies of the citizens and subjects of one of the contracting parties who may die in the territories of the other, shall be buried in the usual burying grounds, or in other decent or suitable places, and shall be protected from violation or disturbance.

ARTICLE XIV

It shall be lawful for the citizens and subjects of the United States of America, and of the Empire of Brazil, to sail with their ships, with all manner of liberty and security, no distinction being made who are the proprietors of the merchandize laden thereon, from any port to the places of those who now are, or who hereafter shall be, at enmity with either of the contracting parties. It shall likewise be lawful for the citizens and subjects aforesaid, to sail with the ships and merchandizes before mentioned, and to trade with the same liberty and security, from the places, ports, and havens, of those who are enemies of either party, without any opposition, or disturbance whatsoever, not only directly from the places of the enemy before mentioned, to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of one power, or under several. And it is hereby stipulated, that free ships shall also give freedom to goods, and that every thing shall be deemed to be free, and exempt, which shall be found on board the ships belonging to the citizens or subjects of either of the contracting parties, although the whole lading, or any part thereof, should appertain to the enemies of either, contraband goods being always excepted. It is also agreed in like manner, that the same liberty be extended to persons who are on board a free ship, with this effect, that although they be enemies to both or either party, they are not to be

taken out of that free ship, unless they are officers or soldiers, and in the actual service of the enemies: Provided, however, and it is hereby agreed, that the stipulations in this article contained, declaring that the flag shall cover the property, shall be understood as applying to those Powers only, who recognize this principle; but if either of the two contracting parties shall be at war with a third, and the other neutral, the flag of the neutral shall cover the property of enemies whose governments acknowledge this principle, and not of others.

ARTICLE XV

It is likewise agreed, that in the case where the neutral flag of one of the contracting parties, shall protect the property of the enemies of the other, by virtue of the above stipulation, it shall always be understood, that the neutral property found on board such enemy's vessels, shall be held and considered as enemy's property, and as such shall be liable to detention and confiscation, except such property as was put on board such vessel before the declaration of war, or even afterwards, if it were done without the knowledge of it; but the contracting parties agree that four months having elapsed after the declaration, their citizens shall not plead ignorance thereof. On the contrary, if the flag of the neutral does not protect the enemy's property, in that case the goods and merchandize of the neutral, embarked in such enemy's ships, shall be free.

ARTICLE XVI

This liberty of commerce and navigation shall extend to all kinds of merchandizes, excepting those only which are distinguished by the name of contraband; and under this name of contraband, or prohibited goods, shall be comprehended—

1st. Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fuzees, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberds, and grenades, bombs, powder, matches, balls, and all other things belonging to the use of these arms;

2dly. Bucklers, helmets, breastplates, coats of mail, infantry belts; and clothes made up in the form, and for a military use;

3dly. Cavalry belts and horses with their furniture;

4thly. And generally all kinds of arms and instruments of iron, steel, brass and copper, or of any other materials manufactured, prepared and formed expressly to make war by sea or land.

ARTICLE XVII

All other merchandize and things not comprehended in the articles of contraband, expressly enumerated and classified as above, shall be held and considered as free, and subjects of free and lawful commerce, so that they may be carried and transported in the freest manner by both the contracting

parties, even to places belonging to an enemy, excepting only those places which are at that time besieged or blockaded; and to avoid all doubt in this particular, it is declared, that those places only are besieged or blockaded, which are actually attacked by a force capable of preventing the entry of the neutral.

ARTICLE XVIII

The articles of contraband, before enumerated and classified, which may be found in a vessel bound for an enemy's port, shall be subject to detention and confiscation, leaving free the rest of the cargo and the ship, that the owners may dispose of them as they see proper. No vessel of either of the two nations shall be detained on the high seas, on account of having on board articles of contraband, whenever the master, captain or supercargo of said vessels, will deliver up the articles of contraband to the captor, unless the quantity of such articles be so great, and of so large a bulk, that they cannot be received on board the capturing ship without great inconvenience: but in this and all the other cases of just detention, the vessel detained shall be sent to the nearest convenient and safe port, for trial and judgment, according to law.

ARTICLE XIX

And whereas it frequently happens that vessels sail for a port or a place belonging to an enemy, without knowing that the same is besieged, blockaded, or invested, it is agreed that every vessel so circumstanced, may be turned away from such port or place, but shall not be detained, nor shall any part of her cargo, if not contraband, be confiscated, unless, after warning of such blockade or investment from any officer commanding a vessel of the blockading forces, she shall again attempt to enter; but she shall be permitted to go to any other port or place she shall think proper. Nor shall any vessel of either that may have entered into such port before the same was actually besieged, blockaded, or invested by the other, be restrained from quitting such place with her cargo, nor if found therein, after the reduction and surrender, shall such vessel or her cargo, be liable to confiscation, but they shall be restored to the owners thereof. And if any vessel having thus entered the port before the blockade took place, shall take on board a cargo after the blockade be established, she shall be subject to being warned by the blockading forces to return to the port blockaded, and discharge the said cargo, and if after receiving the said warning the vessel shall persist in going out with the cargo, she shall be liable to the same consequences as a vessel attempting to enter a blockaded port after being warned off by the blockading forces.

ARTICLE XX

In order to prevent all kinds of disorder in the visiting and examination of the ships and cargoes of both the contracting parties on the high seas, they

have agreed mutually, that whenever a vessel of war, public, or private, shall meet with a neutral of the other contracting party, the first shall remain at the greatest distance compatible with making the visit under the circumstances of the sea and wind and the degree of suspicion attending the vessel to be visited, and shall send its smallest boat, in order to execute the said examination of the papers concerning the ownership and cargo of the vessel, without causing the least extortion, violence, or ill treatment, for which the commanders of the said armed ships shall be responsible with their persons and property; for which purpose the commanders of the said private armed vessels shall, before receiving their commissions, give sufficient security to answer for all the damages they may commit; and it is expressly agreed, that the neutral party shall in no case be required to go on board the examining vessel, for the purpose of exhibiting her papers, or for any other purpose whatever.

ARTICLE XXI

To avoid all kind of vexation and abuse in the examination of the papers relating to the ownership of the vessels belonging to the citizens and subjects of the two contracting parties, they have agreed, and do agree, that in case one of them shall be engaged in war, the ships and vessels belonging to the citizens or subjects of the other, must be furnished with sea letters or passports, expressing the name, property and bulk of the ship, as also the name and place of habitation of the master or commander of said vessel, in order that it may thereby appear that the ship really and truly belongs to the citizens or subjects of one of the parties; they have likewise agreed, that such ships being laden, besides the said sea letters or passports, shall also be provided with certificates, containing the several particulars of the cargo, and the place whence the ship sailed, so that it may be known, whether any forbidden or contraband goods be on board the same; which certificates shall be made out by the officers of the place whence the ship sailed, in the accustomed form; without such requisites said vessel may be detained, to be adjudged by the competent tribunal, and may be declared legal prize, unless the said defect shall be proved to be owing to accident, and be satisfied or supplied by testimony entirely equivalent.

ARTICLE XXII

It is further agreed, that the stipulations above expressed, relative to the visiting and examining of vessels, shall apply only to those which sail without convoy: and when said vessel shall be under convoy, the verbal declaration of the commander of the convoy, on his word of honor, that the vessels under his protection belong to the nation whose flag he carries: and when they are bound to an enemy's port, that they have no contraband goods on board, shall be sufficient.

ARTICLE XXIII

It is further agreed, that in all cases the established courts for prize causes, in the countries to which the prizes may be conducted, shall alone take cognizance of them. And whenever such tribunal of either party, shall pronounce judgment against any vessel, or goods, or property claimed by the citizens or subjects of the other party, the sentence or decree shall mention the reasons or motives, on which the same shall have been founded, and an authenticated copy of the sentence or decree, and of all the proceedings in the case, shall, if demanded, be delivered to the commander or agent of said vessel, without any delay, he paying the legal fees for the same.

ARTICLE XXIV

Whenever one of the contracting parties shall be engaged in war with another state, no citizen or subject of the other contracting party, shall accept a commission, or letter of marque, for the purpose of assisting, or cooperating hostilely, with the said enemy, against the said party so at war, under the pain of being treated as a pirate.

ARTICLE XXV

If, by any fatality, which cannot be expected, and which God forbid! the two contracting parties should be engaged in a war with each other, they have agreed, and do agree, now for then, that there shall be allowed the term of six months to the merchants residing on the coasts and in the ports of each other, and the term of one year to those who dwell in the interior, to arrange their business, and transport their effects wherever they please, giving to them the safe conduct necessary for it, which may serve as a sufficient protection until they arrive at the designated port. The citizens and subjects of all other occupations, who may be established in the territories or dominions of the United States, and of the Empire of Brazil, shall be respected and maintained in the full enjoyment of their personal liberty and property, unless their particular conduct shall cause them to forfeit this protection, which in consideration of humanity, the contracting parties engage to give them.

ARTICLE XXVI

Neither the debts due from the individuals of the one nation, to the individuals of the other, nor shares nor money, which they may have in public funds, nor in public or private banks, shall ever in any event of war or national difference be sequestrated or confiscated.

ARTICLE XXVII

Both the contracting parties being desirous of avoiding all inequality in relation to their public communications and official intercourse, have agreed and do agree, to grant to their Envoys, Ministers, and other public Agents,

the same favours, immunities and exemptions, which those of the most favoured nation do, or shall enjoy: it being understood, that whatever favours, immunities, or privileges, the United States of America, or the Empire of Brazil may find it proper to give the Ministers and Public Agents of any other power, shall, by the same act, be extended to those of each of the contracting parties.

ARTICLE XXVIII

To make more effectual the protection which the United States and the Empire of Brazil shall afford in future to the navigation and commerce of the citizens and subjects of each other, they agree to receive and admit Consuls and Vice-Consuls in all the ports open to foreign commerce, who shall enjoy in them all the rights, prerogatives, and immunities, of the Consuls, and Vice-Consuls of the most favoured nation: each contracting party, however, remaining at liberty to except those ports and places in which the admission and residence of such Consuls may not seem convenient.

ARTICLE XXIX

In order that the Consuls and Vice-Consuls of the two contracting parties, may enjoy the rights, prerogatives, and immunities, which belong to them, by their public character, they shall before entering on the exercise of their functions, exhibit their commissions or patent in due form, to the government to which they are accredited: and having obtained their *exequatur*, they shall be held and considered as such, by all the authorities, magistrates, and inhabitants, in the consular district in which they reside.

ARTICLE XXX

It is likewise agreed, that the Consuls, their Secretaries, officers, and persons attached to the service of Consuls, they not being citizens or subjects of the country, in which the Consul resides, shall be exempt from all public service, and also from all kinds of taxes, imposts and contributions, except those which they shall be obligated to pay on account of commerce, or their property, to which the citizens or subjects and inhabitants, native and foreign, of the country in which they reside are subject; being in every thing besides subject to the laws of their respective States. The archives and papers of the Consulate shall be respected inviolably, and under no pretext whatever, shall any magistrate seize or in any way interfere with them.

ARTICLE XXXI

The said Consuls shall have power to require the assistance of the authorities of the country, for the arrest, detention and custody of deserters from public and private vessels of their country, and for that purpose they shall address themselves to the courts, judges, and officers competent, and shall demand the said deserters in writing, proving by an exhibition of the

registers of the vessels or ships roll, or other public documents, that those men were part of said crews; and on this demand so proved, (saving however, where the contrary is proved,) the delivery shall not be refused. Such deserters, when arrested, shall be put at the disposal of said Consuls, and may be put in the public prison, at the request and expense of those who reclaim them, to be sent to the ships to which they belonged, or to others of the same nation. But if they be not sent back within two months, to be counted from the day of their arrest, they shall be set at liberty, and shall no more be arrested for the same cause.

ARTICLE XXXII

For the purpose of more effectually protecting their commerce and navigation, the two contracting parties do hereby agree, as soon hereafter, as circumstances will permit them, to form a Consular Convention, which shall declare specially the powers and immunities of the Consuls and Vice-Consuls of the respective parties.

ARTICLE XXXIII

The United States of America, and the Emperor of Brazil desiring to make as durable as circumstances will permit, the relations which are to be established between the two parties by virtue of this treaty, or general convention of peace, amity, commerce and navigation, have declared solemnly and do agree to the following points:

1st. The present treaty shall be in force for twelve years from the date hereof, and further until the end of one year after either of the contracting parties shall have given notice to the other, of its intention to terminate the same: each of the contracting parties reserving to itself the right of giving such notice to the other, at the end of said term of twelve years: and it is hereby agreed between them, that on the expiration of one year after such notice shall have been received by either, from the other party, this treaty in all the parts relating to commerce and navigation, shall altogether cease and determine, and in all those parts which relate to peace and friendship, it shall be permanently and perpetually binding on both powers.

2dly. If any one or more of the citizens or subjects of either party shall infringe any of the articles of this treaty, such citizen or subject shall be held personally responsible for the same, and the harmony and good correspondence between the nations shall not be interrupted thereby; each party engaging in no way to protect offender, or sanction such violation.

3dly. If (which, indeed, cannot be expected) unfortunately, any of the articles contained in the present treaty, shall be violated or infringed in any way whatever, it is expressly stipulated, that neither of the contracting parties will order or authorize any acts of reprisal, nor declare war against the other, on complaints of injuries or damages until the said party considering itself

offended, shall first have presented to the other a statement of such injuries or damages, verified by competent proof, and demanded justice and satisfaction, and the same shall have been either refused, or unreasonably delayed.

4thly. Nothing in this treaty contained shall, however, be construed to operate contrary to former and existing public treaties with other sovereigns or states.

The present treaty of peace, amity, commerce and navigation, shall be approved and ratified by the President of the United States by and with the advice and consent of the Senate thereof, and by the Emperor of Brazil, and the ratifications shall be exchanged within eight months from the date of the signature hereof, or sooner if possible.

In faith whereof we the Plenipotentiaries of the United States of America and of His Majesty the Emperor of Brazil have signed and sealed these presents.

Done in the City of Rio de Janeiro this twelfth day of the month of December in the year of our Lord Jesus Christ one thousand eight hundred and twenty-eight.

W. TUDOR	[SEAL]
MARQUEZ DE ARACATY	[SEAL]
MIGUEL DE SOUZA MELLO E ALVIM	[SEAL]